

Tentative Ruling

18CV02101

SANTA CRUZ COUNTY GREENWAY v. SANTA CRUZ REGIONAL TRANSPORTATION COMMISSION

PETITION FOR WRIT OF MANDATE

The Court's tentative decision is to deny the Petition for Writ of mandate in full. The Court intends to adopt its previously rendered tentative decision as supplemented by the following:

Petitioner has failed to meet its burden to establish that "unusual circumstances" exist, or that the project will have significant environmental effects, so as to defeat application of the categorical exemption.

Whether a "project" presents circumstances that are unusual is a factual inquiry. The agency serves as the finder of fact. After reviewing all evidentiary conflicts in the agency's favor under the deferential standard of review this court must affirm the agency's finding if there is any substantial evidence, contradicted or uncontradicted, to support it. *Berkeley Hills Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086,1114.

The court agrees with Petitioner that in determining whether the track repair project has some feature that distinguishes it from others in the exempt category, the proper comparison is not with other "linear transportation lines", but with all other existing structures and facilities within the Class 1 and Class 2 exemptions. However, the court disagrees with Petitioner's position that "unusual circumstances" are presented here based on the location of the entire Branch Line, since it passes through some wetlands and sensitive environmental areas. Instead, unusual circumstances are presented only if the local conditions of the specific track repairs are unusual. While Petitioner argues generally that the repairs will be made in "close proximity" to Harkins Slough and various other drainages, Petitioner has not pointed to evidence in the record which establishes that the location of the actual repair work is sufficiently near these areas to create an "unusual circumstance". In contrast, Respondent has pointed to evidence in the record which support the finding that unusual circumstances do not exist, as the repair nearest Harkin Slough is at MP 5.0, while Harkins Slough is at MP 4.87; and the remaining track repairs are not located in areas identified by the evidence as being sensitive environmental areas.

The court overrules Petitioner's objection to Respondent's Supplemental Brief as the Court has considered Petitioner's Sur Reply.
